THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 19794 of 2006

DATE: 25-01-2007

Between :

Smt. K.Adilaxmi and another

... Petitioners

And

The Hangkong Shanghai Banking Corporation Limited, Branch Office, Panjagutta, Hyderabad.

... Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 19794 of 2006

ORDER:

The first petitioner has availed a loan of about Rs.21,00,000/- from the respondent Bank. Since she committed default in payment, the respondent Bank having initiated the proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ' the Act') sold the secured assets i.e., House Nos.3-4-42/A and 3-4-42/2/A/1, Bahadurguda Village, Saroornagar Mandal in the public auction.

In this writ petition, it is alleged by the petitioners that the said sale was not preceded by any demand notice under sub-section (2) of Section 13 of the Act which is mandatory. It is further alleged that even the possession notice under Section 13 (4) of the Act was not served on her, but a copy of the same was furnished only when the petitioners visited the respondent Bank on 15-9-2006.

It is contended that in spite of several requests made, the respondent did not even furnish the particulars with regard to auction conducted and the amount realized out of the sale said to have been conducted. It is alleged that the statement of loan account dated 01-08-2006 furnished to them did not disclose that the sale proceeds were credited to the account. Hence, this writ petition seeking a Mandamus directing the respondent-Bank to disclose the

particulars of the loan outstanding and to realize the same after receiving the payments made by the petitioners.

In response to the notice ordered, a counter affidavit has been filed on behalf of the respondent-Bank denying the allegations made by the petitioners and stating that the petitioners were irregular in payment of installments of the loan availed by them in spite of the notices sent by the respondent-Bank on many occasions. In the circumstances, the final notice dated 01-06-2005 was issued calling upon the petitioners to pay a sum of Rs.21,47,229/- outstanding as on 01-06-2005 within a period of 60 days. The said notice was delivered to the petitioners on 07-06-2005 and the 60 days period expired on 07-08-2005. However, the petitioners did not clear the dues. Hence, the respondent-Bank filed an application under Section 13(4) of the Act before the District Collector and Magistrate, Ranga Reddy District and vide proceedings dated 15-11-2005, the District Collector and Magistrate, Ranga Reddy District permitted the respondent-Bank to take possession of the schedule property for proceeding under the Act. Thereafter, the property in question was attached by issuing possession notice dated 02-02-2006 in two daily news papers on 06-02-2006 in terms of Rule 8(1) of the Rules and the sale notice dated 21-02-2006 was published in two daily news papers on 24-02-2006. Thus, the sale of the properties in question was in accordance with law and the confirmation of sale certificate was also issued to the auction purchaser on 04-08-2006. With regard to the petitioners' contention that the sale proceeds were not credited to

the loan account, it is stated that the sale transaction would be reflected in the statement of accounts of the petitioner after showing the sale certificate on 04-08-2006 and therefore, the same was not reflected in the statement of account dated 01-08-2006.

I have heard the learned counsel for both the parties and perused the material on record.

At the out set, it is to be noted that the auction pursuant to the sale notice published in the local dailies dated 28-02-2006, was conducted on 24-03-2006. Thereafter, the auction purchaser had deposited the sale consideration and the sale certificate was also issued on 04-08-2006. The specific case of the respondent-Bank was that the possession of the property was handed over to the auction purchaser on 04-08-2006 itself. Thus, this petition filed on 21-09-2006 without making the auction purchaser as a party cannot be maintained and on that ground alone the writ petition is liable to be dismissed in limini.

Even on merits, it is to be noted that the allegation of the petitioners that the demand notice under Section 13(2) of the Act was not served on the petitioners cannot be accepted in the light of the material placed before this Court by the respondent. The record reflects that the demand notice dated 01-06-2005 was sent by registered post on 06-06-2005 and the same was delivered to the petitioners on 07-06-2005 as certified by the concerned post master.

So far as the other contentions are concerned, though it is true that the respondent filed an application before the District Collector and Magistrate, Ranga Reddy District under Section 14 of the Act and the same

was ordered on 15-11-2005 authorizing the Deputy Collector and Mandal Revenue Officer, Saroornagar Mandal to take possession of the mortgaged properties and handover the same to the authorized signatory of the respondent-Bank, admittedly the same was not implemented, but on the other hand, the respondent-Bank had chosen to take possession of the secured assets by issuing a possession notice under Rule 8(1) of the Rules. The record placed before this Court shows that thereafter, the valuation reports were obtained from the Government Registered Valuers and accordingly, the reserve price of the secured asset was fixed and on the basis of the same the sale notices were published in local dailies. As noted above, pursuant thereto, the sale was conducted and possession was also handed over to the auction purchaser.

In the circumstances, no *Mandamus* can be issued at this stage directing the respondent-Bank to receive the payments from the petitioners to regularize the loan account.

However, it is contended by the learned counsel for the petitioners that since the respondent failed to follow the mandatory procedure prescribed under Rule 8 of the Rules, the sale is liable to be declared as null and void. It is primarily contended that either the possession notice issued under Rule 8(1) of the Rules or sale notice issued under Rule 8(6) of the Rules were not delivered to the petitioners by following the procedure prescribed under the Rules.

It is a pure question of fact, which requires to be decided on appreciation of the evidence that may be produced by the parties and the same cannot be

enquired into and decided by this Court in a writ proceeding.

It is to be noted that Section 17 of the Act provides for an application to be made before the Debts Recovery Tribunal having jurisdiction in the matter by any person aggrieved by any of the measures taken by the respondent-Bank including taking possession of the secured assets and selling the same by way of public auction.

Under sub-Section (3) of Section 17, if the Tribunal declares the recourse taken by the secured creditor under sub-section (4) of Section 13 is invalid, the possession of the secured assets may be restored to the borrower or any other appropriate and necessary relief can be granted.

Hence, in case the petitioners are aggrieved by the measures adopted by the respondent-Bank, they ought to have availed the efficacious remedy under Section 17 of the Act, but they cannot straightaway invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. However, petitioners are granted liberty to work out the alternative remedy as indicated above. No costs.

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G. ROHINI,J

Dt. 25-01-2007
KLP